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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

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ANDY TOBIN
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IN THE MATTER OF THE APPLICATION OF
ARIZONA PUBLIC SERVICE COMPANY FOR
A HEARING TO DETERMINE THE FAIR
VALUE OF THE UTILITY PROPERTY OF THE
COMPANY FOR RATEMAKING PURPOSES,
TO FIX A JUST AND REASONABLE RATE OF
RETURN THEREON, TO APPROVE RATE
SCHEDULES DESIGNED TO DEVELOP
SUCH RETURN.

DOCKET NO. E-01345A-16-0036

IN THE MATTER OF FUEL AND
PURCHASED POWER PROCUREMENT
AUDITS FOR ARIZONA PUBLIC SERVICE
COMPANY.

DOCKET NO. E-01345A-16-0123

JOINT POST-HEARING
REPLY BRIEF

I. INTRODUCTION.

Freeport Minerals Corporation and Arizonans for Electric Choice and Competition (collectively "AECC") and Calpine Energy Solutions, LLC, Constellation New Energy, LLC and Direct Energy Business, LLC (collectively "Calpine/Constellation/Direct") hereby submit this Joint Post-Hearing Reply Brief in the above-captioned and above-docketed proceedings ("Instant Proceeding"). As signatories to the March 27, 2017 Settlement Agreement ("Settlement Agreement") they are supportive of the Settlement

LAWRENCE V. ROBERTSON, JR.
ATTORNEY AT LAW
210 W. Continental Road, Suite 216A
Green Valley, AZ 85622

1 Agreement in general, and, in particular, Section XXIII thereof which provides for
2 continuation of a "buy-through" program for large commercial and industrial customers on
3 Arizona Public Service Company's ("APS") electric system.
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6 In their May 17, 2017 Joint Post-Hearing Opening Brief, AECC and
7 Calpine/Constellation/Direct discussed the (i) background to and (ii) specific contents of
8 the AG-X "buy-through" program, which is provided for in Section XXIII of the
9 Settlement Agreement. In this Joint Post-Hearing Reply Brief they discuss (i) why the AG-
10 X program is among the "significant provisions" enumerated in Section 1.5 of the
11 Settlement Agreement, and (ii) why it should be approved by the Commission, together
12 with the Settlement Agreement in its entirety.
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16 **II. THE AG-X PROGRAM REPRESENTS AN APPROPRIATE RATE**
17 **DESIGN RECOGNITION OF THE RAPIDLY CHANGING ELECTRIC**
18 **UTILITY INDUSTRY, AND THE INTERESTS AND NEEDS OF**
19 **ELIGIBLE CUSTOMERS.**

20 Section 1.4 of the Settlement Agreement states in pertinent part that

21 "The terms of this Agreement are just, reasonable, fair and in the public
22 interest in that they, among other things, establish just and reasonable rates
23 for APS customers..." [Emphasis added]

24 In that regard, Section 1.5 notes that

25 "some of the significant provisions of the Agreement include: "... (f)
26 Continuation of a buy-through rate for Industrial and large General Service
27 customers." [Emphasis added]
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Four (4) of the parties of record in the Instant Proceeding specifically discussed the AG-X program in their respective Initial or Opening Briefs. Those parties are APS, the Commission's Staff ("Staff"), Wal-Mart Stores, Inc. and Sam's West, Inc. (collectively "Wal-Mart"), and AECC and Calpine/Constellation/Direct. Each of those parties is a signatory to the Settlement Agreement, and each expressed support for the AG-X program and specifically recommended Commission approval of the same. In addition, the remainder of the signatories by inference also support Commission approval of the program.¹ As the following discussion indicates, several considerations cited by various signatory parties as reasons why Commission approval of other rate design provisions in the Settlement Agreement would be beneficial and in the "public interest" are equally applicable to the AG-X program.

Throughout the Instant Proceeding, both in prepared testimony and exhibits and oral hearing testimony, numerous parties (including APS) have stressed the need to modify and/or augment APS's existing rate schedules, in order to (i) more properly reflect the realities of a rapidly and significantly changing electric utility industry, and (ii) better match cost causation and rate recovery responsibility. The continuation of APS's existing AG-1 "buy-through" program, as modified in the form of the AG-X program, represents a constructive means for continuing to advance each of these rate design objectives with respect to large commercial and industrial customers on APS's system. More specifically,

¹ Further, none of the non-signatory parties who oppose approval of the Settlement Agreement made any reference in their briefs to the AG-X program as being among their respective reasons for opposition.

1 as to the former objective, "customer choice" and "price competition" opportunities have
2 emerged as important considerations in the rapidly-changing electric utility industry in
3 recent years in connection with satisfaction of the generation component of electric service.
4 Simply stated, customers want more control over that service aspect, whether the
5 motivation be for reasons of economy, furtherance of environmental objectives and/or
6 other considerations. The AG-1 "buy-through" program which emerged from APS's 2011
7 rate case was an important initial step towards making those desired opportunities a reality
8 for qualifying large commercial and industrial customers.² Eligible customers would have
9 greater control over their energy use and monthly bills.³ In that regard, AG-1 represented
10 an example of the "mixed competition-regulation" rate design model, which had its genesis
11 in the restructuring of the telecommunications industry, and has since emerged in the
12 electric and natural gas utility industries. As such, it thus was an example of an evolving
13 rate design in a dynamic energy landscape, and represented a means by which a pre-
14 existing regulatory framework could be adjusted to accommodate and provide for needed
15 change.⁴
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21 As to the latter rate design objective, the revisions to the AG-1 program embodied in
22 the AG-X program include what is believed by the stakeholders to be a significantly
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24 ² Electricity is a substantial operating expense for many of these customers, some of whom face price competition
25 from national and international competitors.

26 ³ See generally, APS Brief at page 6, lines 16-17; Staff Brief at page 14, line 22 and page 15, lines 13-14; and, AIC
27 Brief at page 1, lines 2-5 and 10-15.

28 ⁴ See generally, APS Brief at page 1, lines 17-20; and, ConserveAmerica Brief at page 2, lines 7-8

1 improved reflection of cost causation and appropriate rate recovery responsibility, based on
2 approximately 4 and 1/2 years of actual experience under what began in 2012 as an
3 untested "experiment" in rate design on the APS system. These modifications are the result
4 of collaborative arms-length negotiations among affected stakeholders, rather than
5 contentious binary (win/lose) litigation,⁵ and they represent a thoughtful and informed
6 "balancing" of interests. In addition, and significantly, these revisions satisfactorily address
7 and resolve concerns with respect to the AG-1 program expressed by both APS and the
8 Staff in pre-settlement prepared testimony, which led those parties to initially oppose
9 continuation of the AG-1 program.⁶
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12 13 **III. CONCLUSION.**

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15 The record in the Instant Proceeding reflects through the testimony of APS witness
16 Leland Snook and AECC and Calpine/Constellation/Direct witness Kevin Higgins that the
17 AG-1 program has been a success in providing opportunities for "customer choice" and
18 "price competition" in connection with the provision of generation service to qualifying
19 customers, as confirmed by the fact that none of the participating customers have
20 withdrawn from the program since its inception. To the contrary, they are desirous that
21 some form of "buy-through" program be continued. In that regard, as initially conceived
22 and implemented, the AG-1 program represented an example of "modernization" of APS's
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26 ⁵ APS Brief at page 1, lines 20-22 and page 13, lines 4-7 and 11-13

27 ⁶ APS Brief at page 13, lines 20-22; and, Staff Brief at page 6, lines 15-17 and page 15, lines 10-14
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1 historic rate design practices with respect to certain areas of its large commercial and
2 industrial customer constituencies; and, it has since demonstrated that a program designed
3 to address changing customer circumstances and priorities in today's electric utility
4 industry can be successfully integrated with a pre-existing regulatory framework.
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7 At the same time, and based upon approximately 4 and 1/2 years of actual
8 experience, both Messrs. Snook and Higgins provided pre-settlement prepared testimony
9 suggesting ways in which the AG-1 program might be improved, although initially they
10 had differing opinions as to the nature and/or amount of some of those changes. However,
11 as indicated by each in his subsequent testimony in support of the Settlement Agreement,
12 the AG-X program has been designed to more effectively and fully match cost causation
13 and rate recovery responsibility.⁷ In this instance, that "rate recovery" is achieved through
14 the increases in program fees and charges to the program participants provided for in
15 Section 23 of the Settlement Agreement and Appendix "K" to the Settlement Agreement.
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19 Accordingly, based upon the preceding discussion in this Joint Post-Hearing Reply
20 Brief and the discussion in their May 17, 2017 Joint Post-Hearing Opening Brief, AECC
21 and Calpine/Constellation/Direct believe the Commission should approve the AG-X
22 program provided for in Section 23 in conjunction with its approval of the Settlement
23 Agreement in its entirety. The AG-X Program and Attachment "K" to the Settlement
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27 ⁷ See Exhibit AECC-3 at page 6, line 19 – page 8, line 13 (Higgins); and Tr. 893, l. 1 – Tr. 894, l. 16 and Tr. 820, l. 16
28 – Tr. 821, l. 22 (Snook). Also, see APS Brief at page 13, lines 20-22; Staff Brief at page 6, lines 15-17 and page 15,
lines 10-14; and, AECC and Calpine/Constellation/Direct Brief at page 7, line 18-page 8, line 6

LAWRENCE V. ROBERTSON, JR.
ATTORNEY AT LAW
210 W. Continental Road, Suite 216A
Green Valley, AZ 85622

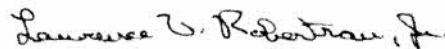
1 Agreement are among those "proposed just and reasonable rates for APS customers"
2 contemplated by Section 1.4 of the Settlement Agreement; and, Section XXIII and the AG-
3 X "buy-through" program (as further depicted in Attachment "K") are among the
4 "significant provisions" of the Settlement Agreement specifically referred to in Section 1.5.
5

6 RESPECTFULLY SUBMITTED this 1st day of June, 2017.

7 PATRICK BLACK
8 Fennemore Craig, PC
9 Attorneys for Freeport Minerals Corporation and
10 Arizonans for Electric Choice and Competition

11 AND

12 LAWRENCE V. ROBERTSON, JR.
13 Of Counsel to Munger Chadwick, PLC
14 Attorney for Calpine Energy Solutions LLC,
15 Constellation New Energy, LLC and Direct Energy
16 Business, LLC

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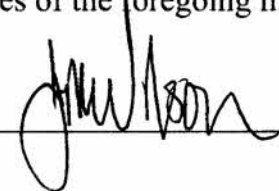
18 By: _____

19 **CERTIFICATE OF SERVICE**

20 ORIGINAL and 13 copies filed this 1st day of June, 2017, with:

21 Docket Control
22 Arizona Corporation Commission
23 1200 West Washington Street
24 Phoenix, Arizona 85007

25 Copies of the foregoing mailed/e-mailed to all parties of record this 1st day of June, 2017.

26 By:  _____
27
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